

REMARKS

Claims 1-6 and 12-20 are pending. Reconsideration is requested in view of the arguments made in the Amendment filed October 10, 2006.

The amendment of claims 2-6 and 12-13 do not change the scope of the claims because they are directed to conform the dependent claims to each other. New claims 14-20 are added to specify that lysozyme is a compound present in the uncoagulated egg sample that is capable of inhibiting growth of the test microorganism leading to false positive results. Thus, no new matter is added.

The Examiner required the submission of information as follows: “the date the Premi®Test became publicly available and the date the insert (exemplified by Exhibit B) was originally released.” The insert was first made publicly available on July 12, 2005.

The two-page leaflet entitled “Premi®Test-egg” (see attached) also describes the method of the present invention. Its date of release is February 2000. But a protocol for using Premi®Test in analyzing egg samples was not made available to the public prior to April 10, 1999. In contrast, the Premi®Test was initially used for analyzing the contamination by antibiotic of meat; a protocol for using Premi®Test in analyzing meat samples was made available to the public prior to April 10, 1999 (see Geijp et al., 1998 which is also attached).

It was alleged in the final Office Action that the leaflet entitled “Premi®Test-egg” is to a product that is different than that described in Exhibit B. This is incorrect. The product is well-known in the art (i.e., Premi®Test), but the present invention is not directed to that product. Instead, the present invention is directed to a new use of the product (i.e., Premi®Test). What both the leaflet and Exhibit B have in common is that they describe a new method of using an existing product for the analysis of eggs. The leaflet is entitled “Premi®Test-egg” and Exhibit B is entitled “Premi®Test sample procedure for eggs.” They contain, however, the same subject matter: a new method of using an existing product. They are merely two different versions of DSM’s information to the public on how to apply the previously known Premi®Test to egg samples using a new protocol.

Therefore, while the Premi®Test was known before the earliest claimed priority date, it is incorrect to assume that Premi®Test as applied to meat samples shows either


(i) prior disclosure of a protocol as applied to egg samples or (ii) a protocol identical to the presently claimed invention. Premi®Test is a product used to detect antibiotic contamination. Applicants' claims are not directed to a product, but to a method. This method is new because it was never described in any disclosure concerning Premi®Test that was publicly available prior to April 10, 1999. A new and nonobvious use of an existing product is patentable.

Having fully responded to all of the pending objections and rejections contained in this Office Action, Applicants submit that the claims are in condition for allowance and earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

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